

# BOARD OF COUNTY COMMISSIONERS

## AGENDA ITEM SUMMARY

Meeting Date: October 19, 2005

Division: Growth Management

Bulk Item: Yes ☐ No ☒

Department: Planning

Staff Contact: K. Marlene Conaway

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### AGENDA ITEM WORDING:

Public hearing to consider adopting an Ordinance to amend the Monroe County Land Development Regulations to implement the Big Pine Key and No Name Key Master Plan, the Habitat Conservation Plan and Goal 105 of the 2010 Comprehensive Plan by renumbering existing Section 9.5-256 to 9.5-271; creating a new Section 9.5-256, Tier Overlay District; providing criteria for designation of tier boundaries and providing a mechanism for Tier Overlay District Map amendments.

**[2<sup>nd</sup> of 2 required public hearings]**

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**ITEM BACKGROUND:** The first public hearing on this amendment was as part of the Goal 105 implementation amendment hearings before the BOCC since December 2004. It is being brought forward individually because the Habitat Conservation Plan (HCP) and the Incidental Take Permit for Big Pine Key and No Name Key are nearing approval by the USFWS and permitting cannot begin on the islands until the Tiers are adopted. The Tier LDR for the remainder of the County are still under review and will not be recommended for the second public hearing until December. In March 2003 the BOCC approved the submittal of the HCP, which includes the Tier Maps, in Resolution # 119-2003. On August 18, 2004 the BOCC adopted Ordinance # 29-2004 the Master Plan for Big Pine Key and No Name Key including Strategy 1.1 requiring the creation of Tier maps and Action Item 2.1.2 directing adoption of the Tier maps as an overlay on the Land Use District Maps.

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### PREVIOUS RELEVANT BOCC ACTION:

Ordinance # 29-2004 adopted the Master Plan for Big Pine Key and No Name Key. In March 2003 the BOCC approved the submittal of the HCP in Resolution # 119-2003. Ordinance No. 018-2004 adopted June 16, 2004 directed staff to prepare text and map amendments to implement Goal 105. Goal 105 was adopted in Ordinance No. 20-2002.

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**CONTRACT/AGREEMENT CHANGES:** N/A

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**STAFF RECOMMENDATIONS:** Approval

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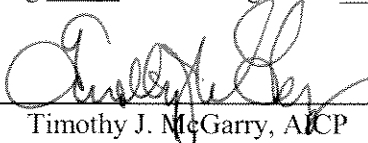
**TOTAL COST:** N/A **BUDGETED:** Yes N/A No       

**COST TO COUNTY:** N/A **SOURCE OF FUNDS:** N/A

**REVENUE PRODUCING:** Yes N/A No        **AMOUNT PER MONTH** N/A **Year**       

**APPROVED BY:** County Atty X OMB/Purchasing        Risk Management       

**DIVISION DIRECTOR APPROVAL:**

  
Timothy J. McGarry, AICP

**DOCUMENTATION:** Included X Not Required       

**DISPOSITION:**        **AGENDA ITEM #**

**ORDINANCE NO.     -2005**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING THE AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT REGULATIONS TO IMPLEMENT GOAL 105 OF THE 2010 COMPREHENSIVE PLAN AND THE TIER OVERLAY SYSTEM FOR BIG PINE KEY AND NO NAME KEY BY RENUMBERING EXISTING SECTION 9.5-256 TO 9.5-271; CREATING A NEW SECTION 9.5-256, TIER OVERLAY DISTRICT; PROVIDING CRITERIA FOR DESIGNATION OF TIER BOUNDARIES FOR BIG PINE KEY AND NO NAME KEY; PROVIDING A MECHANISM FOR TIER OVERLAY DISTRICT MAP AMENDMENTS; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR INCORPORATION IN THE MONROE COUNTY CODE OF ORDINANCES; DIRECTING THE PLANNING AND ENVIRONMENTAL RESOURCES DEPARTMENT TO TRANSMIT A COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, the Monroe County Board of County Commissioners, during public hearings held in December 2004, January, February, March, April, May and June 2005 reviewed and considered the proposed amendment to provide for a Tier Overlay District Map designation on the Monroe County Land Use District Map for Big Pine Key and No Name Key to implement the Master Plan for Big Pine Key and No Name Key and Goal 105 of the 2010 Comprehensive Plan, Rule 28-20.100 F.A.C. and the Tier Overlay system; and

**WHEREAS**, the Monroe County Board of County Commissioners, during public hearings held on August 18, 2004 adopted the Master Plan for Big Pine Key and No Name Key and Goal 1 directs the creation of Tier maps and Goal 2 directs the County to adopt these Tier Maps as an overlay to the land use district maps; and

**WHEREAS**, the Master Plan for Big Pine Key and No Name Key was created in conjunction with the Habitat Conservation Plan (HCP), a mechanism required by the US Fish and Wildlife Services (USFWS) whereby the concerns and responsibilities of the various public agencies with regard to the Key Deer and other covered species and public and private development on the islands can be coordinated, and;

**WHEREAS**, the HCP utilizes the Tier mapping system and designates all undeveloped lands in Pine Key and No Name Key into one of three tiers to direct future development and preservation initiatives to appropriate areas; and

**WHEREAS**, the Tier Map designation for Big Pine Key and No Name Key was developed following the HCP, the Master Plan and criteria in Goal 105, utilizing computer

mapping (GIS), and identifying areas appropriate for additional development and those which are important environmentally and should be preserved; and

**WHEREAS**, Goal 105 provides a framework for future development and land acquisition for the next 20 years that considers the carrying capacity of the Florida Keys, reduces sprawl and promotes sustainability; and

**WHEREAS**, the Monroe County Board of County Commissioners directed staff to prepare text and map amendments in Ordinance No. 018-2004 adopted June 16, 2004, to include the Tier Overlay District Map designations in accordance with Goal 105; and

**WHEREAS**, the tier boundaries for the Big Pine Key and No Name Key Tier Overlay District Map were drawn using environmental and development information and digital data from the HCP, the Planning Department and the Property Appraisers Office; and

**WHEREAS**, the Monroe County Board of County Commissioners directed staff to prepare text and map amendments in Ordinance No. 018-2004 adopted June 16, 2004, to include the Tier Overlay Map Designations in accordance with Goal 105; and

**WHEREAS**, Tier I lands are those lands where all or a significant portion of the land area is characterized as environmentally sensitive and important for the continued viability of the covered species; and

**WHEREAS**, Tier II lands are scattered lots and fragments of environmentally sensitive lands primarily located on canals and at a distance from US #1; and

**WHEREAS**, Tier III is appropriate for additional infill development because of the location in conjunction to US #1 and amount of existing development in the areas designated; and

**WHEREAS**, the creation of Section 9.5-256, Tier Overlay District, Monroe County Code provides criteria for the designation of Tier boundaries on Big Pine Key and No Name Key pursuant to the HCP, the Master Plan, Goal 105, Year 2010 Comprehensive Plan and a mechanism for the implementation of the Tier System by overlaying the Land Use District Map; and

**WHEREAS**, the Planning and Environmental Resources staff prepared an amendment to Chapter 9.5 (Land Development Regulations) of the Monroe County Code creating Section 9.5-256 that provides for a Tier Map overlay, criteria for Big Pine Key and No Name Key Tier designation, and a mechanism for amending the Tier Map; and

**WHEREAS**, the Planning Commission, after hearing comments at four public hearings, made changes to the staff draft amendments creating and recommended approval of the Tier Overlay amendment which included the Big Pine Key and No Name Key criteria to the Monroe County Code to the Board of County Commissioners on November 3, 2004; and

**WHEREAS**, the Planning and Environmental Resources Department has made minor changes to the proposed draft based on direction of the Planning Commission, including minor text revisions to ensure readability and correct typographical errors or omissions in the text; and

**WHEREAS**, the Board of County Commissioners has reviewed the proposed amendments to the Land Development Regulations to renumber existing Section 9.5-256 to Section 9.5-271 and create a new Section 9.5-256 (Tier Overlay District, recommended by the Planning Commission and the Planning and Environmental Resources Department); and,

**WHEREAS**, the Board of County Commissioners finds the proposed amendments to establish the Big Pine Key and No Name Key Tier Overlay District, designation criteria, and Tier Overlay District Map amendment procedures are consistent with and further the goals, objectives and policies of the Year 2010 Comprehensive Plan, particularly Goal 105 and its associated objectives and policies;

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:**

**Section 1:** Section 9.5-256, Aggregation of development, is hereby renumbered as Section 9.5-271, Monroe County Code.

**Section 2:** A new Section 9.5-256, Monroe County Code, is hereby created that reads as follows:

**“Sec. 9.5-256. Tier overlay district.**

(a) reserved

(b) reserved

(c) *Big Pine Key and No Name Key Tier Overlay District:* The Tier boundaries are designated using the Big Pine Key and No Name Key Habitat Conservation Plan, 2005, and the Master Plan for Big Pine Key and No Name Key, August 2004.

(c) *Tier overlay district map amendments:* The Tier Overlay District Map may be amended to reflect existing conditions in an area if warranted because of drafting or data errors or changed conditions. A Tier Overlay District Map amendment from Tier I or Tier II to Tier III or Tier II to Tier III on Big Pine Key and No Name Key shall not be considered if the amendment is in conflict with the Tier Map in the approved HCP, the United States Fish and Wildlife Incidental Take Permit and the Master Plan for Big Pine Key and No Name Key. Tier Overlay District Map amendments shall be made pursuant to the procedures for map amendments to this chapter. Unlawful conditions shall not be recognized when determining existing conditions and regulatory requirements.

(d) *Request for Tier I designation:* Notwithstanding the provisions of Section-9.5-511(d)2, any individual may submit an application to the planning department containing substantial and competent documentation that an area meets the

Tier I criteria. Applications must be received by July 1 of each year on a form approved by the director of planning for consideration by the special master at a public hearing advertised at least fifteen (15) days prior to the hearing date. Said hearing by the special master shall be held prior to November 1 of each year. The director of planning will review the documentation and any other appropriate scientific information and prepare an analysis report for the special master. The special master will render a written opinion to the planning commission and board of county commissioners either that the application meets the criteria for designating the lands as Tier I or that the documentation is insufficient to warrant a map amendment. The posting, advertising and review will follow the procedures in 9.5-511(d)(3)(4) and (5).”

**Section 2.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 3.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict. The repeal of an ordinance herein shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby.

**Section 4.** This ordinance does not affect prosecutions for ordinance violations committed prior to the effective date of this ordinance; does not waive any fee or penalty due or unpaid on the effective date of this ordinance; and does not affect the validity of any bond or cash deposit posted, filed, or deposited pursuant to the requirements of any ordinance.

**Section 5** This ordinance shall be filed in the Office of the Secretary of State of Florida but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving the ordinance.

**Section 6.** This ordinance shall be transmitted by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes.

**Section 7.** The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto, and shall be appropriately numbered to conform to the uniform numbering system of the Code.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.]

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida,  
at a regular meeting of said Board held on the \_\_\_\_ day of \_\_\_\_\_, A.D., 2005.

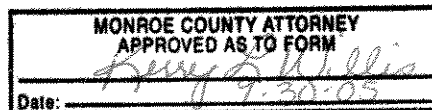
Mayor Dixie Spehar \_\_\_\_\_  
Mayor Pro Tem Charles "Sonny" McCoy \_\_\_\_\_  
Commissioner George Neugent \_\_\_\_\_  
Commissioner David Rice \_\_\_\_\_  
Commissioner Murray E. Nelson \_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Mayor/Chairperson

(SEAL)

ATTEST: DANNY KOHLAGE, CLERK




BY: \_\_\_\_\_  
Deputy Clerk

# MEMO

September 24, 2005

TO: Monroe County Board of County Commissioners

FROM: K. Marlene Conaway, Director 

RE: Tier Overlay District amendment to the Land Development Regulations (LDR) to implement Goal 105 and the Big Pine Key and No Name Key Master Plan.

## Introduction

The first public hearing on this amendment was as part of the Goal 105 implementation amendment hearings before the BOCC since December 2004. It is being brought forward individually because the Habitat Conservation Plan (HCP) and the Incidental Take Permit for Big Pine Key and No Name Key is nearing approval by the USFWS and permitting cannot begin on the islands until the Tiers are adopted. The Tier LDR for the remainder of the County are still under review and will not be recommended for the second public hearing until December.

In March 2003 the BOCC approved the submittal of the HCP, which includes the Tier Maps, in Resolution # 119-2003. On August 18, 2004 the BOCC adopted Ordinance # 29-2004 the Master Plan for Big Pine Key and No Name Key including Strategy 1.1 requiring the creation of Tier maps and Action Item 2.1.2 directing adoption of the Tier maps as an overlay on the Land Use District Maps.

Attached is the proposed amendment to the Land Development Regulations to implement the Master Plan for Big Pine Key and No Name Key, the Habitat Conservation Plan, the Goal 105, Rule 28-100 and the Florida Keys Carrying Capacity Study (FKCCS).

## Background

The Master Plan and the Habitat Conservation Plan for Big Pine Key and No Name Key, includes Tier maps designating the lands into one of three tiers. The public hearings on the Master Plan resulted in changes to several developed properties on the islands. The HCP only designates undeveloped privately owned properties. However, requirements for all new development are the same as that in the Master Plan.

The Board of County Commissioners (BOCC), at a meeting on September 15, 2005 adopted an Ordinance approving the Comprehensive Plan to effectuate the provisions of Goal 105 of the 2010 Comprehensive Plan, and Rule 28-20.100 FAC. This amendment to the Land Development Regulations provides the mechanism to implement the Comprehensive Plan amendments by creating a Tier overlay to the Land Use District Maps.

The Planning Commission reviewed the staff proposed draft at a workshop in June and an

amended draft in four public meetings in September, October and November 2004. The Planning Commission approved several amendments and voted to recommend the attached draft to the BOCC on November 3, 2004. During the summer three focus group meetings were held; two with the construction industry representatives and one with a group of interested individuals and environmental groups. Several planned meetings were cancelled due to the hurricanes and finally two evening community workshops, one in Key Largo and one in Sugarloaf, were held in October.

### **Tier Overlay District**

#### **Overview**

The Tier Overlay District provides the authority to designate geographical areas on Big Pine and No Name Keys into one of three Tiers. The Tier system will be used to assign ROGO and NROGO points, determine the amount of clearing and prioritize lands for public acquisition. The Tier boundaries are designated using the Big Pine Key and No Name Key Habitat Conservation Plan, 2005, and the Master Plan for Big Pine Key and No Name Key, August 2004.

The Tier maps will become a zoning overlay when adopted. Changes to the maps will follow the procedures in Sec. 9.5-511 of the LDRS. Changes to Tier II or Tier III on Big Pine Key may only be considered if the changes are in conformance to the Habitat Conservation Plan and the Incidental Take Permit. Changes may also be requested to Tier I by any other individual who submits an application containing *substantial and competent documentation* that the area meets the criteria for Tier I. The review process for this type of application includes a review of the documentation by a Special Master who will provide a recommendation to the Planning Commission and the Board of County Commissioners.